



PUBLIC NOTICE

Federal Communications Commission
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DA 05-2895
November 3, 2005

**PLEADING CYCLE ESTABLISHED FOR COMMENTS
ON QWEST'S PETITION FOR FORBEARANCE
FROM ENFORCEMENT OF THE REQUIREMENT THAT INCUMBENT LECs CONVERT
SPECIAL ACCESS CIRCUITS OF POST-MERGER VERIZON/MCI AND SBC/AT&T TO UNE
PRICING**

WC Docket No. 05-294

Comments Due: January 9, 2006
Reply Comments Due: February 23, 2006

On October 4, 2005, Qwest Communications International, Inc. (Qwest) filed a petition pursuant to section 10 of the Communications Act of 1934, as amended (the Act),¹ requesting that the Commission forbear from enforcing certain unbundling obligations of the Act² as they apply to incumbent local exchange carriers (LECs), including Qwest, if the Commission approves the pending mergers of SBC with AT&T and Verizon with MCI.³ Qwest contends in the Petition that, if such mergers are approved, SBC/AT&T and Verizon/MCI will become dominant suppliers in the enterprise market, having both the incentive and the ability to stifle competition.⁴ Qwest notes that, at present, the Commission's rules require incumbent LECs⁵ to convert special access circuits already used by competitors to unbundled network element (UNE) pricing so long as the circuits are not used exclusively for long distance or wireless service.⁶ Qwest asks the Commission to relieve Qwest and other incumbent LECs of this duty

¹ See 47 U.S.C. § 160 (2002).

² 47 U.S.C. § 251(c).

³ Qwest Communications International, Inc. Petition for Forbearance from Enforcement of the Commission's Circuit-Flipping Rules as They Apply to Post-Merger Verizon/MCI and SBC/AT&T, WC Docket No. 05-294 (filed October 4, 2005) (Qwest Petition or Petition).

⁴ See Petition at 1-2.

⁵ In its Petition, Qwest uses the terms "LEC" and "ILEC" interchangeably. See, e.g., *id.* at 6 ("Forbearance is also in the public interest because it would prevent [SBC/AT&T and Verizon/MCI] from using Qwest's duty (and other LECs' duty) to convert circuits as a means of punishing Qwest and other ILECs . . .") (emphasis added). Because the rules that Qwest asks the Commission not to enforce implement 47 U.S.C. § 251(c), and because 47 U.S.C. § 251(c) applies to incumbent LECs only, we use the term "incumbent LEC" throughout this Public Notice.

⁶ See Petition at ii, vii, 2-3. See also *id.*, n.7, citing 47 U.S.C. § 251(c); 47 C.F.R. §§ 51.309, 51.315, 51.316, 51.318. Qwest states that the practice of converting special access circuits to UNE pricing is often referred to as "circuit-flipping." *Id.* at ii.

with regard to SBC/AT&T and Verizon/MCI.⁷ In Qwest's view, requiring Qwest and other incumbent LECs to convert such special access circuits to UNE pricing would give SBC/AT&T and Verizon/MCI a cost advantage that, in combination with their size, would cause them to dominate the enterprise market.⁸ Qwest maintains that SBC/AT&T and Verizon/MCI, in light of their market power, will not be "impaired" within the meaning of the Act in any market,⁹ and that requiring incumbent LECs to provide SBC/AT&T and Verizon/MCI with special access circuits at UNE pricing could curtail competition.¹⁰ Qwest further states that forbearance is consistent with the public interest and would not be unreasonably discriminatory.¹¹ Qwest therefore petitions the Commission to forbear from enforcement of sections 51.309, 51.315, 51.316 and 51.318 of the Commission's rules, 47 C.F.R. §§ 51.309, 51.315, 51.316 and 51.318, to the extent those rules require Qwest and other incumbent LECs to convert the existing special access circuits of SBC/AT&T and Verizon/MCI to UNEs.¹²

This Public Notice establishes certain procedural requirements relating to consideration of Qwest's Petition. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on Qwest's Petition on or before January 9, 2006, and reply comments on or before February 23, 2006. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Suite TW-A325, Washington, DC 20554. One (1) courtesy copy must be delivered to Janice M. Myles at Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, 445 12th Street, SW, Suite 5-C140, Washington, DC 20554, or via e-mail, janice.myles@fcc.gov, and one (1) copy must be sent to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail www.bcpjweb.com.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however,

⁷ Petition at 5.

⁸ Petition at 4.

⁹ Petition at 4.

¹⁰ Petition at iii-iv.

¹¹ Petition at iv-vii.

¹² Petition at 11. If either merger fails to occur, Qwest states that it will withdraw this Petition as to the non-merging parties. *Id.*

commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail www.bcpweb.com.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information regarding this proceeding, contact Jeremy Miller, Competition Policy Division, Wireline Competition Bureau, (202) 418-1580, or via e-mail jeremy.miller@fcc.gov.

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